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PRESIDING OFFICER'S
RULING NO. C99-1/4

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint on Post E.C.S.

Docket No. C99-1

PRESIDING OFFICER'S RULING ON
MOTION FOR PROTECTIVE ORDER

(July 8, 1999)

This ruling addresses the Motion of United Parcel Service for a Protective Order, filed May 14, 1999. United Parcel Service (UPS) suggests that if the Commission developed an appropriate generic protective order that could be applied to discovery responses containing information viewed as competitively sensitive by the participant providing the information, this might facilitate discovery. UPS accompanies its motion with a proposed Statement of Protective Conditions. The Postal Service filed a response in opposition on May 25, 1999. United States Postal Service Response to Motion of United Parcel Service for Protective Order (Response).

The Postal Service contends that the protective conditions suggested by UPS are inadequate. It refers to discovery requests filed by UPS and states that "the information requested in virtually all of the UPS interrogatories is either privileged, too sensitive commercially, or too far attenuated from the matters at issue in this proceeding to require the production of responsive information under any set of protective conditions, let alone the protective conditions proposed by UPS." Response at 2. While maintaining that no conditions would provide adequate protection, the Postal Service nonetheless provides a full discussion of the type of protective condition that might be most likely to provide adequate assurances of confidentiality should the

Commission require the Service to respond to relevant discovery. The Postal Service did not include with this discussion language that would implement this type of protective conditions.

Presiding Officer's Ruling C99-1/2, issued May 26, 1999, directed the Postal Service, and any other participant wishing to do so, to submit proposed language for protective conditions to be used in this case. That ruling also invited participants to file comments discussing when more or less stringent protective conditions are appropriate. Three participants responded to this invitation.¹ In addition, United Parcel Service filed a Reply to United States Postal Service's Comments with Respect to Protective Conditions (UPS Reply) accompanied by a Motion for Leave to File. The UPS Reply is permitted.

Each of the responses suggest that it is premature to establish a single set of protective conditions in the expectation that these conditions will be appropriate in every instance. The Postal Service restates its view that protective conditions should not be considered until a legitimate need for access to data is demonstrated. Postal Service Response at 5. OCA reaches a similar conclusion premised on its view that protective conditions should not be considered until potential harm from the release of specific data has been fully substantiated. OCA argues that to this point, the Postal Service has failed to make such a showing. OCA Response at 3-4. UPS states that whether protective conditions are appropriate is a question that should be resolved on a case by case basis. It explains that in those instances when protective conditions may be necessary, the terms of those conditions should balance the potential harm to the party asserting the privilege with the public interest in assuring the effective availability of statutory remedies provided for by the Postal Reorganization Act. UPS Response at 5.

¹ Office of the Consumer Advocate Comments in Response to P.O. Ruling No. C99-1/2 (OCA Response), filed June 8, 1999; Comments of United Parcel Service in Response to Presiding Officer's Ruling No. C99-1/2 (UPS Response), filed June 8, 1999; and Response of the United States Postal Service to P.O. Ruling No. C99-1/2 with Respect to Protective Conditions (Postal Service Response), filed June 8, 1999.

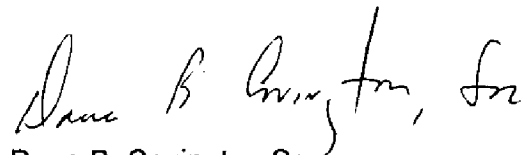
The UPS Reply expands on its contention that protective conditions are applied to information characterized as commercially sensitive only in extremely limited situations, and that highly restrictive protective conditions of the type proposed by the Postal Service are disfavored. UPS offers a slightly modified version of the proposed language for protective conditions that it suggested initially as being adequate to provide full protection while allowing participants meaningful access to relevant and material information.

Presiding Officer's Ruling C99-1/3, issued July 7, 1999, determined to phase this case, with the first phase to focus on the limited issue of whether Post E.C.S. is a "postal" service. That ruling also directed UPS and the Postal Service to hold discussions and report on the extent to which outstanding discovery-related controversies could be resolved informally. Following that report, rulings on pending motions to compel responses to interrogatories will be forthcoming. Those rulings may require that information be provided subject to protective conditions.

Participants have provided extremely helpful analyses of the factors to be considered in establishing protective conditions. It seems clear that protective conditions may have to be varied, depending on the nature of the information. Therefore protective conditions, if necessary, will be established on a case-by-case basis taking into account the suggestions and supporting arguments already presented by participants.

RULING

Action on the Motion of United Parcel Service for a Protective Order will be deferred until such time as it is found necessary to make a submission of information subject to protective conditions.

A handwritten signature in black ink, appearing to read "Dana B. Covington, Sr.", is written over the printed name.

Dana B. Covington Sr.
Presiding Officer